

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 06-542V

Filed: April 27, 2010

ROSE E. TURNER,

parent of

MADYLYN GARDNER,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Decision on fees and costs; Reasonableness
and evidence supporting an attorney rate
increase

CORRECTED ATTORNEY'S FEES AND COSTS DECISION¹²

GOLKIEWICZ, Chief Special Master.

On January 4, 2010, petitioner in the above-captioned case filed an Application for Fees and Costs. P Application for Fees and Costs Pursuant to 42 U.S.C. § 300aa-15, filed January 4, 2010. As noted in respondent's Response to petitioner's fee application, a mathematical error relating to the total amount requested appears on the second page of the fee application. The undersigned's office confirmed the accuracy of the totals recited in this Decision with counsel's staff on January 28, 2010. The breakdown of fees and costs requested is: attorney fees requested are \$5,380.00; paralegal fees requested are 3,790.00; and costs requested are \$3,103.00. Again, the total amount of fees and costs requested is \$12,273.00.

In compliance with General Order #9, petitioner's counsel avers that counsel bore all costs for this case, with the exception of the initial filing fee, which was paid prior to counsel's involvement in the case. Statement of Counsel Regarding Fees, Costs and Retainer Pursuant to

¹The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id.

² This decision was erroneously filed under an incorrect case number on March 4, 2010.

General Order 9, James R. Kneisler, Jr., Esq., filed March 1, 2010. Petitioner's counsel made attempts to communicate with petitioner regarding costs borne prior to his involvement, but those attempts were unsuccessful. Id.

On January 8, 2010, respondent filed a Response to Petitioner's Application for fees and costs. R Response, filed January 8, 2010. Respondent voiced general concerns regarding the fee application. However, respondent stated that respondent "will not here contest the reimbursement of the requested fees and costs because respondent believes that contesting an award of costs and fees in this case would not be an efficient use of Program resources."

Regarding the attorney's hourly rate, the undersigned finds that petitioner has not sufficiently justified the 50% increase in the rate after October 8, 2008. According to the Affidavit in Support, Attachment 1, the hourly attorney rate charged prior to October 8, 2008 is \$200.00; the hourly rate thereafter is \$300.00. Upon review of the time entries for attorney hours, the undersigned notes the hourly rate after October 2008 was not consistently billed at \$300.00 per hour. Attachment 2. Time entries on November 25, 2008, April 13, 2009, and May 13, 2009, bill at the lower rate of \$200.00. Regardless of this inconsistency, petitioner's counsel offers the reasons of inflation and increased staffing for the increase to \$300.00 after October 2008. Attachment 1. As cited in the Application, petitioner is aware that the burden of proving reasonableness falls upon petitioner. Beyond the Affidavit in Support, petitioner filed no evidence justifying a 50% increase. A special master may reduce fee requests that are unreasonable *sua sponte* and is not required to provide petitioner with an opportunity to explain the unreasonable request. See, e.g., Sabella v. Sec'y of the Dept. of Health & Human Servs., 86 Fed. Cl. 201, 208-09, 221 (Fed. Cl. 2009). Due to the lack of any persuasive support for the requested increase in hourly rate and the rate of \$200.00 being charged after October 2008, the undersigned awards petitioner's attorney hourly rate at \$200.00 for all 19.4 hours. Therefore, the total amount of attorney fees awarded will be \$3,880.00 of the total award.

The court hereby awards the petitioner \$7,670.00 in fees and \$3,103.00 in litigation costs. **Specifically, petitioner is awarded a lump sum of \$10,773.00 in the form of a check payable jointly to petitioner and petitioners' attorney.**³

The Clerk of the Court is directed to enter judgment accordingly.⁴

IT IS SO ORDERED.

Gary J. Golkiewicz
Special Master

³ This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, 42 U.S.C.A. §300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See generally, Beck v. Secretary of HHS, 924 F.2d 1029 (Fed. Cir. 1991).

⁴Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.